VAA Information

Führungskräfte Chemie

Framework Collective Agreement

for University Graduates in the Chemical Industry

2 May 2000

Agreed between the

Federal Employers' Association for Chemistry e. V., Wiesbaden, on behalf of its member associations

and the

Association of Employed Academics and Executives in the Chemical Industry e.V., Cologne,

the
Marburger Bund, Association of Privately Employed and Government Employed Physicians e. V., Cologne,

and the
Mining, Chemical and Energy Industries Union, Hanover

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Mitglied im Deutschen Führungskräfteverband ULA und im Europäischen Führungskräfteverband Chemie F.E.C.C.I.A.

Section 1 Scope

1. Personal:

a) For employees with a higher education qualification in science or technology, provided that they predominantly perform an activity for which this higher education is a requirement. A higher education qualification in the natural sciences or technology comprises in particular a qualification in chemistry, physics, engineering, pharmacy, medicine, agricultural sciences, architecture, mathematics and/or biology; higher education shall be regarded as having been completed if the final examination prescribed by the study programmes and examination regulations, e.g. degree examination or state examination, has been passed and the corresponding certificate awarded.

A higher education qualification in this sense requires a final examination in a faculty or a department with its own right to award doctoral degrees, which by its nature entitles the holder to a doctorate and for which, according to the study and examination regulations, a study period of at least eight semesters is required, without taking into account any practical semesters; if such a final examination is not provided for in the course of study, this course may be deemed equivalent to a doctorate[1)].

b) For commercial, technical and other employees who are subject to this Collective Agreement by virtue of their relevant activities under individual agreements[2)].

This Collective Agreement does not apply to executive employees. For the purposes of this Collective Agreement, executive employees are employees who are regarded as executive employees in accordance with the provisions of the Works Constitution Act and whose individually agreed conditions of service at least correspond in all respects to the provisions of this Collective Agreement.

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1) If the study and examination regulations provide for final examinations in certain courses of study or fields of study at academic institutions of higher education which, even after less than eight semesters of study, directly entitle the holder to a doctorate, these shall be treated as equivalent if these courses of study already existed at the relevant academic institutions of higher education before 1972.

2) Section 6 of this Collective Agreement shall not apply to the employment relationships of these employees. Instead, the competition provisions of the German Commercial Code (HGB) shall apply.

2. Geographical

For the federal states of Baden-Württemberg, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saarland, Schleswig-Holstein and Berlin (West)[1)].

3. Area of activity

For enterprises and sales companies in the chemical industry including their auxiliary and ancillary enterprises, research centres, administrative centres, distribution warehouses and sales offices for chemical and mineral oil trading companies, for chemical plant construction companies, for offices and enterprises involved in chemical consulting and in the construction and maintenance of chemical plants as well as for chemical laboratories and research institutes.

The following production areas, in particular, belong to the chemical industry:
1. Basic chemicals
2. Nitrogen and nitrogen compounds
3. Nitrogen and phosphorus fertilisers and their processing
4. Compression, liquefaction and filling of technical gases and dry ice
5. Natural and synthetic dyestuffs and their processing
6. Coloured pencils and pastel crayons
7. Solvents and plasticisers
8. Lacquers, varnishes, polishes
9. Explosives and detonators, ammunition, fireworks and other explosives, collodion wool
10. Medicinal products including medical dressings, prostheses and sutures
11. Biochemical and genetic engineering products
12. Plant protection, pesticides and disinfectants
13. Essential oils and perfumes, chemical baking aids and preservatives, flavourings
14. Photochemicals, photographic papers, manufacture and use of photosensitive materials such as polymer film and precoated printing plates
15. Films and their technical processing, photographic, electrochemical and magnetic materials, including equipment for recording, storing, evaluating and reproducing information distributed in connection with the foregoing products, copying
16. Chemical conversion of coal, natural gas, petroleum and petroleum products including distillation, refining, cracking, hydrogenation, oxidation, gasification and further processing of the conversion products, transport, transhipment and storage of petroleum and conversion products

1) Berlin (West) comprises the area of the German state of Berlin in which the German Constitution (Grundgesetz) applied before 3 October 1990.

17. Carbon black
18. Charcoal making
19. Soaps, detergents, cosmetics
20. Glues, putties, adhesives, adhesive tapes, gelatine

21. Waxes and candles, stearin and olein
22. Footwear, leather and floor care products, cleaning products
23. Technical oils and greases
24. Chemical auxiliary agents of all types such as textile auxiliary agents, leather auxiliary agents, tanning extracts, tanning chemicals and chemical auxiliary agents for other industries
25. Plastics including foams, moulding compounds and data media as well as their further processing
26. Man-made fibres and their further in-house processing
27. Chemical films, including artificial casings, transparent material and magnetic tapes, and their processing
28. Chemical articles such as gas mantles, chemical papers, foundry auxiliary agents, electrodes, electrical and galvanic carbon, asbestos products and chemical laboratory supplies including auxiliary agents for analysis and diagnosis, semiconductor production using chemical processes and their further in-house processing
29. Electrochemical products and their further in-house processing
30. Synthetic inorganic raw materials and their further processing
31. Chemical building materials, fibre cement, chemical building protection, wood preservatives and fire retardants, insulating materials and their further processing
32. Impregnation where this does not involve ancillary works in the woodworking industry
33. Natural and synthetic rubber, latex, successor products and their further processing
34. Recovery of rubber and vulcanisation
35. Linoleum, artificial leather, gutta-percha and balata and similar materials
36. Non-ferrous and precious metals and their further in-house processing
37. Ferroalloys and silicon compounds with metals, abrasives, synthetic gemstones
38. Gas protection and breathing apparatus
39. Roofing and waterproofing membranes and their further processing
40. Chemical office supplies such as printer ribbons, carbon paper, permanent stencils, writing inks and drawing inks
41. Natural resin processing
42. Wood saccharification
43. Carcase recycling
44. Nuclear chemistry including production, processing and disposal of fuel elements and building materials
45. Uranium concentrates
46. Application of environmental technologies including disposal of waste by biological, chemical, physical and thermal treatment, disposal facilities for hazardous waste, recycling of residues e.g. pyrolysis
47. Chemical synthesis of any kind

Section 2 Recruitment, termination of contract, probationary period

1. At the request of the employer or employee, the appointment shall be agreed in writing making reference to this Collective Agreement.

2. a) The period of notice on both sides shall be at least three months to the end of the month. After 5 years with the company, it shall be extended on both sides to 6 months to the end of a calendar quarter; after 10 years with the company to 9 months to the end of a calendar quarter; after 15 years with the company to 12 months to the end of a calendar quarter. The employee is to be given the opportunity to make his or her views known before an ordinary notice is given to terminate his or her contract.

b) After 15 years with the company, in the event of termination of employment for operational reasons between the ages of 50 and 64, the employee shall be granted 3 working days off each month from the 7th to the 11th month within the 12-month period of notice as well as full leave in the 12th month with continued payment of his or her salary.[1)]

3. a) A probationary period of up to 6 months may be agreed in respect of a permanent employment contract.

b) A probationary employment contract for a specific period may be agreed for a maximum of 12 months. If the employment relationship is not to be continued after the end of the probationary period, the other party must be notified of this in writing 6 weeks before expiry at the latest (in the case of a probationary employment contract of less than 12 months) and 8 weeks before expiry at the latest (in the case of a 12-month contract).

c) During a probationary period as per Point 3 a), the period of notice shall be 6 weeks to the end of the month. If an employment contract concluded for a specific period is continued beyond the expiry date – in the case of Point 3 b) beyond the termination date – it shall be deemed to have been extended for an indefinite period; the provisions in Point 2 shall apply to its termination.

Section 3 References

1. Without prejudice to the right to a definitive letter of reference, the employee shall be entitled to immediate receipt of a provisional letter of reference from the date of notice of termination of employment.

2. In justified individual cases, in particular in the event of a change of line manager, an interim letter of reference shall be issued to the employee on request.

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1) In the first six months after notice of termination, Art. 629 of the German Civil Code remains unaffected.

Section 4 Voluntary activities

1. The time required for voluntary work in federal, state and municipal associations and assemblies, in social insurance and unemployment insurance institutions and their associations, and as a judge in labour and social courts shall be granted without a reduction in salary and without offsetting against annual leave, provided the employee is not significantly impeded in his or her operational activities by exercising such honorary office. In making such a judgement, the nature of his or her work, the nature and size of the enterprise and the number of employees in that enterprise shall be taken into account.

2. Point 1 applies analogously to voluntary activities

a) involving participation in meetings and events which primarily serve to represent the overall interests of those employees covered by the personal scope of this Collective Agreement,

b) in conciliation proceedings as defined in Section 11,

c) in scientific associations as defined in Section 10 (2).

3. The employer shall be informed immediately of the intended acceptance of an honorary office as described in Point 1.

4. In other respects the relevant statutory regulations remain unaffected.

Section 5 Working hours

1. Working hours are based on general company regulations, on specific company regulations for parts of the company, on the tasks to be performed by the employee and on the requirements of the company. Further details can be agreed either by means of company agreement[1)] or individual contract.

2. Necessary temporary and minimal overtime shall not be remunerated separately. Nor shall a temporary and minimal reduction in regular working hours justify a reduction in salary.

3. If special circumstances make it necessary to work overtime, nights, Sundays or public holidays over a longer period of time or repeatedly, appropriate compensation shall be paid for this or a different form of settlement shall be agreed, without regard to the level of the employee’s salary.

If, as a result of short-time working, a longer reduction in regular working hours is necessary, an appropriate lump-sum deduction from the salary is permissible. This deduction may be made after a one-month notice period, and no sooner than two months after the start of short-time work.

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1) The parties to the Collective Agreement assume here that company agreements on the length of working hours can only be made by mutual consent and in compliance with Article 76 (6) of the German Industrial Relations Act (BetrVG).

4. Employees who have reached the age of 57 are entitled to paid reduced working hours for older employees, taking into account company requirements. When granting such reduced working hours, the employer shall apply the general company regulations analogously, taking into account the employee's tasks and responsibilities.

5. If a part-time early retirement employment contract of up to six years' duration in accordance with the provisions of the Part-Time Early Retirement Act is agreed with employees who have reached the age of 55, the resulting working hours during the total duration of the part-time early retirement employment contract may be distributed over a period of up to six years. Part-time early retirement employment contracts with a duration of more than six years may also be agreed, whereby the average working hours of the employee during a period of six years, which must lie within the total period of the agreed partial retirement period, may not exceed half of the employee's previous regular working hours as per Point 1. The regulation regarding reduced working hours for older employees as per Point 4 shall not apply where a part-time employment contract for older employees has been agreed.

An application to conclude a part-time early retirement employment contract must be submitted to the employer in writing. This application may be made no sooner than three months before the employee’s desired start of part-time early retirement employment. The employer must inform the employee in writing whether they agree to the application within two months from receipt of the application.

Section 6 Non-competition clause

I. Definition

This is an agreement between the employer and the employee which restricts the employee's commercial activities for a period after termination of the employment relationship (non-competition clause). It must be made in writing. Commercial activities also include individual acts and transactions of equivalent scope.

II. Limits of the non-competition clause

1. The non-competition clause must

a) be circumscribed objectively according to the employee's area of work or according to production sector[1) 2),]

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1) Notwithstanding the reservation in Note 2), the non-competition clause may only cover those areas of work or production sectors in which the employee was active or about which he or she directly or indirectly acquired knowledge within the framework of the employment relationship, the exploitation of which elsewhere would endanger the employing enterprise’s legitimate commercial interests.

2) Where the area of work of the [employee’s] barred enterprise comprises more than those production sectors that fall under the areas of activity of the employee that are barred or are to be barred in accordance with Section 6 (II) (1 a)), the question as to whether the non-competition clause can prohibit activity for that entire enterprise should be assessed under the present Collective Agreement in the exactly same way as under Section 11 of the Collective Agreement for Employees with an Academic Education in the Chemical Industry of 27 April 1920.

b) be defined geographically and
c) limited in time.
A period of up to two years is regarded as a regular barring period. If the employee leaves the company in breach of contract, the barring period is extended by the remaining term of the contract.

2. The non-competition clause is non-binding if
a) it does not serve to protect a legitimate commercial interest of the enterprise;
b) taking into account the compensation granted, it constitutes an unreasonable obstacle to the progress of the employee due to its scope in terms of geography, time or object.

III. Obligation to pay compensation

1. The non-competition clause is only valid if the employer undertakes in the agreement to pay compensation to the employee for the barring period.

2. During the term of validity of the non-competition clause, the obligation to pay compensation shall not apply if
a) the employee is guilty of infringing the non-competition clause; if the permanent loss of compensation is inappropriate, the loss of compensation shall be limited to the period of infringement;
b) during the barring period the employee seriously infringes the competitive interests of the enterprise to such an extent that the employer can no longer be reasonably expected to pay the compensation.

IV. Level of compensation

During the normal barring period, the employee shall be paid compensation equal to their final salary (Section V), but no more in one year than four times the respective minimum annual salary for employees with a doctorate in the first year of employment. If the employee has other earned income from work during the barring period, the compensation shall be reduced to one third; the same shall apply if the employee fails to take up gainful employment in his or her profession[1)].

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1) Employer and employee may agree that the compensation of one third shall be suspended if and as long as the employee works in an affiliated company during the barring period and the payment of non-competition compensation is unreasonable taking into account the overall circumstances.

V. Calculation of the compensation

1. Compensation shall be calculated on the basis of the employee's last regular contractual salary. If it comprises commission or other variable remuneration, it shall be calculated on the basis of the average of the last three years or, in the case of a shorter period of service, this shorter period.

2. Christmas bonuses and similar payments shall be taken into account if they are expressly contractually guaranteed or deemed to have been agreed in view of prevailing practice or other circumstances, or if they would have been due to the employee in the year of his/her departure if he/she had been in regular employment and would have been paid if he/she had continued his/her employment.

3. Inventor's compensation of any kind, allowances, reimbursement of expenses and anniversary bonuses (seniority bonuses) shall not be taken into account.

4. The compensation shall be paid in monthly instalments in arrears.

VI. Notice of termination

The employer may waive the non-competition clause by means of a written declaration before the termination of the employment relationship, with the effect that, one year from the date of the declaration, the employer will be released from the obligation to pay the compensation.

VII. Invalidity of the non-competition clause

The non-competition clause shall become invalid if

1. the employer or employee gives notice of extraordinary termination of the employment relationship for good cause and declares in writing within one month of giving notice[1)], that they do not consider themselves bound by the agreement;

2. the employer becomes aware, after termination of the employment relationship, of a gross breach by the employee of their official duties which would have justified extraordinary termination of the contract and is likely to harm the economic interests of the company, and the employer declares in writing[2)] within one month of the breach coming to light that it does not consider itself bound by the agreement;

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1)2) The declaration shall be deemed to have been received within the time limit if it is sent to the last known address on the last day of the deadline period.

3. the employment relationship is terminated by mutual agreement and at the same time the non-competition clause is rescinded in writing.

VIII. Contractual penalties

If the employee has promised to pay a contractual penalty in the event that he or she contravenes the non-competition clause, the employer may only assert relevant claims in accordance with Art. 340 of the German Civil Code (BGB). The provisions of the German Civil Code on the reduction of disproportionately high contractual penalties remain unaffected.

IX. Transitional provisions

An extension of the non-competition clause to a third year is no longer permissible after the entry into force of this Collective Agreement. Any non-competition clauses agreed prior to June 1, 1976 pursuant to Section 6 of the Collective Agreement of November 5, 1959 for University Graduates in the Chemical Industry shall remain unaffected by the revised version of Section 6.

The version of Section 6 (VI), which applied until the entry into force of this revised version, shall continue to apply unchanged to these non-competition clauses.

Section 7 Obligation of confidentiality

1. An agreement between the employer and the employee on the confidentiality of business and trade secrets, the exploitation or disclosure of which may harm a legitimate commercial interest of the employer, is only valid for the period after termination of the employment relationship insofar as it does not unreasonably restrict the employee in his or her commercial activity. The agreement may not serve to circumvent the provisions relating to the non-competition clause (Section 6).

2. An agreement between employer and employee on the confidentiality of knowledge and experience acquired by the employee in the course of his/her employment, the exploitation or disclosure of which may harm the employer's interests, shall also be valid for the period after termination of the employment relationship as long as the employee receives adequate benefits at the instigation of, or paid by, the employer.

3. The agreement must be made in writing.

Section 8 Salary

1. The salary shall be freely agreed between the employer and employee.

The monthly salary of an employee who is subject to this Collective Agreement under an individual contract shall appropriately exceed the applicable ‘tariff’ rate for the highest pay group in force at the time under this Collective Agreement and shall continue to rise in line with relevant activity and service.

Special activities and work under particularly hazardous or difficult conditions shall be remunerated appropriately. Remuneration for inventions and technical improvement suggestions within the meaning of the Act on Employee Inventions shall be identified separately.

2. In the event of incapacity to work due to illness or industrial accident, in the event of medical care, prevention and rehabilitation measures within the meaning of the statutory provisions, or in the event of rationalisation-related or other redundancies for operational reasons, the employee may not be placed in a worse position than provided for in the Framework Collective Agreement for the Chemical Industry.

The same applies to the continued payment of salary in the event of death.

3. Employees who are exempt from compulsory inclusion in the statutory pension insurance scheme shall, on application, receive a contribution to their exempting life insurance scheme equal to the amount of the employer's contribution that would have been payable to the statutory pension insurance scheme if the employee was subject to compulsory inclusion in the scheme; the maximum contribution by the employer shall not, however, be more than half of the total amount paid by the employee for this insurance. The exempting life insurance scheme is equivalent to voluntary insurance in the statutory pension insurance scheme.

This entitlement shall not exist if the employer provides the employee with an equivalent other benefit. In particular, payments to a pension fund can be considered as an equivalent other benefit.

Section 9 Holiday leave

1. The employee is entitled to holiday leave if he or she has been with the company for at least 6 months.

2. Annual holiday leave is 30 working days.
If the employee takes up work after 30 June or leaves before 1 July, he/she shall be entitled only to the proportion of his/her annual leave corresponding to his/her period of service in that leave year.

3. The holiday leave shall be taken as required by the interests of the company. The employee's legitimate wishes shall be taken into account as far as possible.

4. The holiday leave entitlement expires on 31 March of the following calendar year, unless it was unsuccessfully claimed.

5. Entitlement to payment in lieu of holiday leave does not apply if the employee
a) leaves the company in breach of contract due to a gross breach of the duty of loyalty.
b) is dismissed without notice due to intentional breach of contract.

Section 10 Outside activities

1. The employee may engage in work outside the company[1)].

If this secondary activity or the preparatory work required for it significantly impairs the employee's operational activity or professional performance, materially affects the company's areas of activity, makes use of the company's facilities or makes use of special operational experience, the employee is obliged to obtain the prior consent of the company management.

2. The employee may also work voluntarily in professional associations recognised by the parties to the Collective Agreement, unless there are substantial operational reasons to the contrary. The employer must be informed immediately of such intended activity.

Section 11 Conciliation and arbitration procedure

I. General principles

1. The parties to the Collective Agreement shall agree on a conciliation procedure in order to provide assistance during the conclusion of collective agreements, including the amendment of terminated collective agreements, and to authoritatively eliminate any ambiguities in existing collective agreement regulations regarding the scope of the collective agreement.

2. The procedure can only be invoked if negotiations between the parties to the collective agreement have broken down. This is the case where at least one of the negotiating parties expressly declares this or refuses to negotiate any further.

3. The parties to the collective agreement are obliged to engage in the negotiations and the conciliation procedure.

II. Federal Conciliation Board

A Federal Conciliation Board shall be set up with its headquarters and office at the Federal Employers' Association for Chemistry (Bundesarbeitgeberverband Chemie e. V.)

III. Basic principles of procedure

1. The Federal Conciliation Board shall comprise four members each from the employer side and the employee side. The members of the Federal Conciliation Board shall be appointed for each meeting by the respective parties to this Collective Agreement.

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1) The employee may, in particular in his/her field of expertise, take part in public contests and competitions, prepare expert opinions, give talks and lectures and write publications.

2. The members of the Federal Conciliation Board shall appoint the chairperson from among their number, alternating between members of the employer and employee side.

3. The Federal Conciliation Board shall determine the course of the proceedings, including the gathering of evidence and information and the further clarification of the facts of the case.
Each party may nominate specialists and other persons in a position to provide information or make these persons available for the proceedings.

4. If the Federal Conciliation Board postpones the proceedings, the organisations responsible for appointing its members may nominate persons other than members to continue the negotiations.

5. The negotiations shall not be public.

6. Each organisation shall bear the costs for the representatives it supplies to the Federal Conciliation Board and for the specialists and other persons in a position to provide information whom it appoints or makes available. Each organisation shall bear the costs of the members it appoints to the Federal Conciliation Board. Otherwise, the costs of the proceedings shall be shared.

IV. Proceedings/conciliation settlement

1. Applications for conciliation proceedings shall be made in writing to the office of the Federal Conciliation Board, stating the matter in dispute.

2. The office of the Federal Conciliation Board shall immediately send copies of the application to the other party and to the parties to the present Collective Agreement. It shall then agree the date with the organisations involved and convene the Federal Conciliation Board within one month. This deadline may only be exceeded with the agreement of the parties to the present Collective Agreement.

3. Before a conciliation settlement is made, attempts shall be made to reach agreement between the parties.

4. Conciliation decisions of the Federal Conciliation Board made unanimously or by a majority of the votes cast shall be final and binding on both parties.

5. Discussions and voting on the conciliation settlement shall be secret. A brief written record shall be kept of the course of the negotiations, including the wording of the conciliation settlement and the date of its issue. The written record shall be signed by the Chairperson and one member each from the employer and employee sides. The conciliation settlement shall then be made known to the parties.

6. If a conciliation procedure which was initiated to eliminate a lack of clarity in an existing collective agreement regulation has been unsuccessful, then clarification can only be achieved by means of labour court proceedings in accordance with Art. 2 (1) of the German Equal Opportunities Act (AGG).

V. Arbitration

In the case of individual disputes arising from employment contracts that do not relate to the interpretation of collective bargaining provisions, the Federal Conciliation Board may be invoked as an arbitration board if the parties and the associations involved in the case agree to the arbitration proceedings.

The above provisions shall apply analogously to these proceedings. An arbitration settlement does not exclude labour court proceedings.

Section 12 Transitional and final provisions

This Collective Agreement may be terminated with 6 months' notice to the end of half a calendar year, no sooner than 31 December 1997. Notice of termination shall not cover the provisions in Section 11. These provisions can only be terminated separately with a notice period of 6 months to the end of the year, no sooner than the end of the calendar year following the expiry of the remaining provisions of the agreement.